

TOWN OF WEBSTER, NEW HAMPSHIRE
Zoning Board of Adjustment
945 Battle Street/Rte. 127
Webster, NH 03303
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Zoning Board of Adjustment Minutes June 11, 2013

Case No. 13-03 Special Exception

Dieter Kunath

374 Little Hill Road, Map 1 Lot 7

Present: Chairman Martin Bender, Members David Barnes, Robert Drown, Jr., Barbara Corliss, Alternates Jaye Terrazzano and Dee Blake. Alternate Terrazzano served as a voting member due to the absence of Member Don Koberski.

7:00 PM: Chairman Bender opened the first hearing. Secretary Alternate Terrazzano took attendance and read the application. Chairman Bender explained the procedure to the applicant and then invited him to make his presentation. Mr. Kunath stated that he wished to build a 40 foot by 60 foot garage less than 100 feet from the front property line. He stated that he could build it further back, but his property is very wet. In order to build in that area would be a significant cost because the foundation would need to be built up quite a bit.

Acting Member Terrazzano asked if the building was going to be more barnlike and would it have a second story. Mr. Kunath stated that it was going to be a garage - a metal building without a second story.

Member Drown questioned the purpose of the garage. Mr. Kunath replied that he would store his belongings and part of the building would be a workshop. Member Drown also asked about personal or commercial use. Mr. Kunath stated it would be just for personal use. Member Drown inquired as to the type of metal building, i.e., Quonset hut as opposed to structural steel. Mr. Kunath replied it would be a modern steel building similar to the Town's Public Safety Building, just a smaller scale. During the discussion, it was clarified that Mr. Kunath would not be creating a new entry/driveway; access would remain through his current driveway.

Member Corliss asked Mr. Kunath why was his land wet. He stated water came from the fields above his property and also from a culvert under Little Hill Road that drains onto his field. Member Corliss inquired as to the height of the structure. Mr. Kunath stated that the walls will be 12 feet high and the height at the peak of the roof will be 22 feet. Member Barnes asked if Mr. Kunath was going to put the garage on a slab. Mr. Kunath stated he will have to build a full foundation because of the roof weight.

There were no more questions. Chairman Bender asked if anyone would like to speak in favor. No abutters were present so no one spoke in favor or in opposition.

7:16 PM Chairman Bender closed the testimony and the Board discussion began. The application was reviewed by the Board members and no one had any problems with it. Chairman Bender called for a vote and the Board voted unanimously in favor of granting Mr. Kunath's request for a Special Exception.

7:17 PM The hearing was adjourned.

Case No: 13-04 Variance
James D. Michaud & Catherine Burke-Michaud
1104 Pleasant Street, Map 6 Lot 25-2

7:18 PM Chairman Bender opened the second hearing. Acting Member and Secretary Terrazzano took attendance and read the application. Chairman Bender explained the procedure specific to applying for a variance; the applicant must prove to the Board that they have met all five criteria for a variance as required by RSA 674:33 and the Town of Webster's Zoning Ordinance.

Mrs. Burke-Michaud addressed the Board; her husband was unable to come because of his work. She presented the Board with a document that had signatures from the abutters that were in favor of the application. She stated that she and her husband needed to sell their home and were hoping to subdivide their 10.06 lot into two 5.03 acre lots and build a new house for themselves on the proposed new lot. They currently have 400 feet of frontage. They are requesting a variance from Article IV, Section 2 to permit reduction of road frontage for a proposed subdivided lot from the required 250 feet to 150 feet.

Mrs. Burke-Michaud presented the following arguments to meet the variance conditions:

1. **No diminution in value of surrounding properties would be suffered:**
"There would be no decrease to the values of surrounding properties because the proposed use is compatible to the surroundings. And it would retain and protect property values."
2. **Granting the permit would be of benefit to the public interest:**
"Granting a variance would not be contrary to public interest because there would be no adverse effects to the public interest; it's for private residential use."
3. **Denial of the permit would result in unnecessary hardship to the owner seeking it:**

"Denial of the variance would result in unnecessary hardship since the proposed use is reasonable and the zoning restriction as applied interferes with the reasonable use of the property. Considering the unique setting of the property and its environment the lot has ample 250 feet which is the required but now is at the frontage to 150 feet. All other requirements from the zoning are adhered to: the 5 acre lot size, the 150 foot width minimum, the 200 foot in the rear, the 100 feet between buildings, the 50 foot between the property building and sidelines."

4. By granting the permit substantial justice would be done:

"There is not a fair and substantial relationship between the general purposes and the zoning ordinances and the specific restriction on the property because the 250 feet deprives utilization of the land rendering the lot unbuildable and precludes reasonable use. The variance would not injure the public or private rates of others since it is for private residential use. By granting the variance substantial justice would be done because we would be left with nothing otherwise."

5. The use must not be contrary to the spirit of the ordinance:

"The use contemplated would not be contrary to the spirit of the ordinance. It does not interfere with the health, safety or general welfare of the Town. It is not for commercial or industrial use. It compliments and enhances the beauty of the rural atmosphere and is compatible with land uses and the Webster Master Plan. It's appropriate use of the land."

Chairman Bender discussed the five criteria with Mrs. Burke-Michaud. Chairman Bender reminded Mrs. Burke-Michaud that the existing lot before subdividing meets the Town's zoning requirements. He stated that the applicants were trying to create a *new* lot. He stated he understood that Mrs. Burke-Michaud was trying to argue that it would be a *financial* hardship for the applicants, however, the Board cannot consider that. According to the Supreme Court's decisions, the court only considers special conditions regarding the *property*, i.e., the land itself. Chairman Bender stated the applicants had no justification to create a new lot. Mrs. Burke-Michaud stated she thought that was the purpose of requesting the variance. She stated that her request adhered to all the other criteria. Chairman Bender stated that it did not. He emphasized that ALL five criteria had to be met.

Chairman Bender then read the Supreme Court's ruling regarding an applicant seeking an area or dimensional variance:

"An area variance is needed to enable the applicant's proposed use of the property given the special conditions of the property."

The benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue, other than an area variance."

Chairman Bender asked Mrs. Burke-Michaud to justify her request addressing the rulings above. Mrs. Burke-Michaud stated that the lot with the current residence has to have 250 feet of frontage after subdividing. In order to give that lot the 250 feet of frontage, Mrs. Burke-Michaud stated she would have to reduce the proposed new lot's frontage to 150 feet. She stated that going back further on the proposed new lot opens up to 250 feet. She stated that the special condition of that proposed lot was the narrowing from the 250 feet down to the 150 feet. She stated that the proposed new lot would have ample 250 feet back further. Chairman Bender stated that she still needed 250 feet at the front. Member Corliss stated that the current lot conforms to the Zoning Ordinance; the applicants have asked to create a non-conforming lot which would be in violation of the laws of the Town.

There were no other questions. Chairman Bender asked if anyone would like to speak in favor of the application. Mrs. Burke-Michaud turned in a document to the Board earlier, signed by her some abutters that were in favor of the application. No abutters were present. No one spoke in opposition.

8:01 PM Chairman Bender closed the testimony and the Board discussion began. Member Corliss stated the applicants' request was contrary to what the Town voters wanted. Chairman Bender stated that the applicants were trying to create a substandard lot, which cannot be done.

There was no other discussion. Chairman Bender called for a vote and the Board voted unanimously to deny the request for the variance. Chairman Bender explained the procedure again regarding the applicant's right to file for a rehearing within 30 days.

8:12 PM The hearing was adjourned.

Case No.: 13-05 Special Exception

Mary L. & Gordon Welch

505 Battle Street, Tax Map 5 Lot 56

8:13 PM Chairman Bender opened the third hearing. Acting Member and Secretary Terrazzano took attendance and read the application. Chairman Bender explained the procedure to the Welch's and then invited them to make their presentation. Mr. Welch stated that he would like to build a 12 foot by 16 foot storage shed within 43 feet of the southern property line. Mr. Welch stated they need to take down an older smaller shed.

There were no more questions. Chairman Bender asked if anyone wished to speak in favor of the application. There were no abutters present so no one spoke in favor or in opposition.

8:21 PM Chairman Bender closed the testimony and the Board discussion began. There were no questions or comments from the Board. Chairman Bender called for a vote and the Board voted unanimously to grant the request for the special exception.

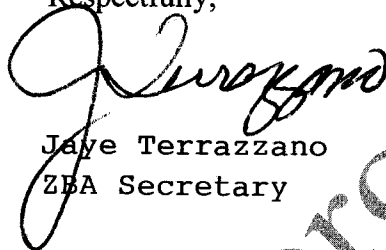
8:22 PM Hearing adjourned.

The next item on the agenda was the review of the draft minutes from March 19th, April 9th and May 14th 2013. The Board voted unanimously to approve as written all three sets of minutes.

8:23 PM The meeting was adjourned.

These minutes were approved as written at the ZBA meeting of July 9, 2013.

Respectfully,



Jaye Terrazzano
ZBA Secretary